

1 UNITED STATES DISTRICT COURT  
 2 DISTRICT OF NEVADA

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 4  
 5 SHAWN CAWLEY, )

6 Plaintiff, )

7 v. )

8 OFFICER GOOD, *et al.*, )

9 Defendants. )  
 10 )  
 11 )

3:11-cv-00565-HDM-VPC

**REPORT AND RECOMMENDATION  
 OF U.S. MAGISTRATE JUDGE**

April 4, 2013

12 This Report and Recommendation is made to the Honorable Howard D. McKibben, United  
 13 States District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28  
 14 U.S.C. § 636(b)(1)(B) and LR IB 1-4. Before the court is defendant's motion for summary judgment  
 15 (#30).<sup>1</sup> Plaintiff opposed (#34) and defendant replied (#35). The court has thoroughly reviewed the  
 16 record and recommends that defendant's motion for summary judgment (#30) be granted.

17  
 18 **I. HISTORY & PROCEDURAL BACKGROUND**

19 Plaintiff Shawn Cawley ("plaintiff"), a *pro se* litigant, is currently incarcerated at Northern  
 20 Nevada Correctional Center ("NNCC") in the custody of the Nevada Department of Corrections  
 21 ("NDOC") (#18). However, the allegations set forth in plaintiff's complaint pertain to events which  
 22 occurred during plaintiff's arrest on August 8, 2009 (#6-1, p. 3). On August 4, 2011, plaintiff filed a  
 23 civil rights complaint pursuant to 42 U.S.C. § 1983, alleging that Reno Police Officer Good,  
 24 unnamed arresting officers, and unnamed medical providers at the Washoe County Detention Center  
 25 ("WCDC") were deliberately indifferent to plaintiff's serious medical needs, in violation of the  
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<sup>1</sup> Refers to the court's docket numbers.

1 Eighth Amendment (#6-1). The court screened the complaint pursuant to 28 U.S.C. § 1915A, and  
2 permitted plaintiff's Eighth Amendment claim to proceed (#5, p. 4). Thereafter, defendant Good  
3 moved to dismiss plaintiff's complaint on the grounds that the Eighth Amendment's protections do  
4 not apply to pre-trial detainees (#12). The court denied defendant Good's motion, finding that  
5 plaintiff's allegations should be construed as a claim arising under the Fourteenth Amendment's Due  
6 Process Clause (#16, p. 6).

8 Plaintiff alleges that on August 8, 2009, he fell asleep in an unoccupied motor vehicle  
9 because he was homeless (#6-1, p. 3). The vehicle's owner "forcefully struck [plaintiff] on the  
10 temple area of his head" with a metal pipe and knocked him unconscious. *Id.* Defendant Good and  
11 three other police officers arrived to investigate the situation and arrested plaintiff on "larceny auto  
12 allegations." *Id.* Plaintiff informed the officers that he was in excruciating pain and had a severe  
13 headache from being hit with the metal pipe. *Id.* at 5. A medical unit arrived at the scene, but for  
14 "several hours" the arresting officers refused to permit plaintiff to be transported to the hospital,  
15 even though plaintiff continued to complain of excruciating pain and plaintiff's head wound was  
16 profusely bleeding. *Id.* at 5-6. Plaintiff acknowledges that he was ultimately transported to the  
17 hospital, treated, and then released to WDCD. *Id.* at 6.

20 Plaintiff asserts that for the next six months, he continued to experience pain and blurred  
21 vision, and complained to WDCD "nurse Jane Doe #4" and "doctor John Doe #5." *Id.* at 6-7.  
22 However, these medical providers merely offered plaintiff "generic aspirin" or told him that the  
23 county could not afford his medical treatment and that he would have to wait until he went to prison  
24 for further treatment. *Id.* Plaintiff states that once he arrived at prison "it was determined" that he  
25 suffered an eye injury from the blow to his head and that his vision in one eye had severely  
26 deteriorated due to lack of treatment. *Id.* at 7.

1 Defendant Good contends that on August 8, 2009, he was working the graveyard shift for the  
2 Patrol Division of the Reno Police Department. At approximately 3:56 a.m., dispatch notified  
3 defendant Good of an attempted grand theft auto on Ballentyne Way in Reno, Nevada (#30-1, Ex. 1,  
4 ¶ 2). At 4:11 a.m., defendant Good arrived at the scene of the reported crime. Officer Andelin,  
5 Officer Cragg and Lieutenant Rulla had already arrived, and had taken plaintiff into custody. *Id.* at ¶  
6 4. Defendant Good met with the victims and took their statements. *Id.* At approximately 4:29 a.m.,  
7 Officer Cragg placed plaintiff in the rear of defendant Good's patrol car. *Id.* at ¶ 6. Defendant Good  
8 was not in the patrol car at that time. *Id.* When defendant Good finished his investigation, he  
9 advised plaintiff of his *Miranda* warnings. *Id.* Plaintiff stated that he understood his rights and  
10 wished to speak with defendant Good (#30-1, Ex. 1, ¶ 6; #30-1, Ex. 3, p. 4). They then discussed  
11 plaintiff's involvement with the attempted grand theft auto. *Id.*

14 During this conversation, defendant Good noticed that plaintiff had dried blood on the left  
15 side of his face. *Id.* Defendant Good also noticed a large bump on the back of plaintiff's neck. *Id.*  
16 Defendant Good observed that plaintiff was not bleeding and did not appear to be in acute distress  
17 (#30-1, Ex. 1, ¶ 6). However, plaintiff told defendant Good that his head hurt. *Id.* Consequently, at  
18 5:02 a.m., defendant Good called dispatch and asked to have a REMSA ambulance unit sent to the  
19 scene for a "conscious breathing subject with a head injury who [is] complaining of pain" (#30-1,  
20 Ex. 1, ¶ 7; #30-1, Ex. 2, p. 2). Six minutes later, the REMSA ambulance arrived. *Id.*

23 The emergency medical technicians evaluated plaintiff's condition (#30-1, Ex. 1, ¶ 7; #30-1,  
24 Ex. 4). They found that plaintiff was alert and spoke clearly and concisely, although plaintiff was  
25 not "actively cooperative" (#30-1, Ex. 4). Plaintiff informed the REMSA technicians that he had  
26 been hit over the head with a metal pipe. *Id.* The emergency medical technicians noted that  
27 although plaintiff had a small laceration on the left side of his head, plaintiff's chief complaint was  
28

1 of shoulder pain. *Id.* Plaintiff denied experiencing any lightheadedness, dizziness or blurred vision,  
2 and told the emergency medical technicians that he did not want to go to the hospital with them. *Id.*  
3 The REMSA technicians informed defendant Good that even though plaintiff did not want to go to  
4 the hospital with them, plaintiff should go to the hospital for a CAT scan (#30-1, Ex. 1, ¶ 7; #30-1,  
5 Ex. 3, p. 4; #30-1, Ex. 4). At 5:20 a.m., defendant Good drove plaintiff to Renown Regional  
6 Medical Center in Reno, Nevada (#30-1, Ex. 1, ¶ 8). At 5:31 a.m., plaintiff was admitted to the  
7 hospital (#30-1, Ex. 5). At approximately 6:43 a.m., Officer Borst relieved defendant Good at the  
8 hospital, and defendant Good had no further contact with plaintiff (#30-1, Ex. 1, ¶ 8; #30-1, Ex. 3, p.  
9 4).

12 Dr. Gary Gansert—who is the emergency room physician who examined plaintiff—reported  
13 that plaintiff had a headache and a superficial laceration on his forehead, which required no suturing  
14 (#30-1, Ex. 5). Plaintiff never lost consciousness, and had no neck pain, blurred vision, or double  
15 vision. *Id.* A CAT scan of plaintiff's head and cervical spine was normal. *Id.* Dr. Gansert  
16 prescribed plaintiff Vicodin for pain. *Id.* After plaintiff was released from the hospital, Officer  
17 Borst transported him to WDCD (#30-1, Ex. 3, p. 4).

19 Defendant now moves for summary judgment on three grounds: (1) that defendant Good did  
20 not know of, or disregard, an excessive risk to plaintiff's health or safety (#30, p. 7); (2) that there is  
21 no evidence that any delay in plaintiff's medical treatment caused plaintiff further injury (#30, p. 9);  
22 and (3) that defendant Good is entitled to qualified immunity. *Id.* Defendant Good attaches several  
23 documents to support his motion for summary judgment, including: (1) the declaration of  
24 Christopher Good (#30-1, Ex. 1); (2) the August 9, 2009, Reno Police Department's calls-for-service  
25 inquiry response (#30-1, Ex. 2);<sup>2</sup> (3) plaintiff's arrest report (#30-1, Ex. 3);<sup>3</sup> (4) plaintiff's pre-  
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<sup>2</sup> Authenticated by the declaration of Christopher Good (#30-1, Ex. 1, ¶ 2).

1 hospital care (“REMSA”) summary (#30-1, Ex. 4);<sup>4</sup> and (5) plaintiff’s August 9, 2009, medical  
 2 records from Renown Regional Medical Center (#30-1, Ex. 5).<sup>5</sup>

3 Plaintiff opposes defendant Good’s motion, and argues that defendant Good was aware of  
 4 plaintiff’s injuries, yet left plaintiff handcuffed on the ground for thirty minutes (#34, p. 6).

5 Defendant Good replies that plaintiff’s documentation fails to set forth specific facts that  
 6 create a genuine issue for trial (#35, p. 2). Defendant Good asserts that there is no evidence  
 7 supporting plaintiff’s claim that defendant Good knew of plaintiff’s injury prior to speaking with  
 8 him around 4:29 a.m., or that he left plaintiff handcuffed on the ground. *Id.* at 3.  
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10 As a preliminary matter, the court notes that plaintiff is proceeding *pro se*. “In civil cases  
 11 where the plaintiff appears *pro se*, the court must construe the pleadings liberally and must afford  
 12 plaintiff the benefit of any doubt.” *Karim-Panahi v. Los Angeles Police Dep’t*, 839 F.2d 621, 623  
 13 (9th Cir. 1988); *see also Haines v. Kerner*, 404 U.S. 519, 520-21 (1972).  
 14

## 15 II. DISCUSSION & ANALYSIS

### 16 A. Legal Standards

#### 17 1. 42 U.S.C. § 1983

18 Title 42 U.S.C. § 1983 “provides a federal cause of action against any person who, acting  
 19 under color of state law, deprives another of his federal rights.” *Conn v. Gabbert*, 526 U.S. 286, 290  
 20 (1999). Section 1983 does not offer any substantive rights, but provides procedural protections for  
 21 federal rights granted elsewhere. *Albright v. Oliver*, 510 U.S. 266, 271 (1994). To prove liability  
 22 under § 1983, a plaintiff must: (1) show that a person acting under color of state law engaged in  
 23 some type of conduct, which (2) deprived the plaintiff of some right, privilege or immunity secured  
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27 <sup>3</sup> Authenticated by the declaration of Christopher Good (#30-1, Ex. 1, ¶ 5).

28 <sup>4</sup> Authenticated by the declaration of Mitchell Nowicki (#30-1, p. 14).

<sup>5</sup> Authenticated by the declaration of Judy Mosher, custodian of records for Renown Regional Medical Center (#41-1, p. 2).

1 by the Constitution or federal statutory law. *Parratt v. Taylor*, 451 U.S. 527, 535 (1981), *overturned*  
 2 *on other grounds by Daniels v. Williams*, 474 U.S. 327 (1986).

## 3 **2. Summary Judgment Standard**

4 Summary judgment allows courts to avoid unnecessary trials where there are no factual  
 5 disputes. *Nw. Motorcycle Ass'n v. U.S. Dep't of Agric.*, 18 F.3d 1468, 1471 (9th Cir. 1994). The  
 6 court will grant summary judgment if no genuine issues of material fact remain in dispute and the  
 7 moving party is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(c). The court must view all  
 8 evidence and any inferences arising from the evidence in the light most favorable to the nonmoving  
 9 party. *Bagdadi v. Nazar*, 84 F.3d 1194, 1197 (9th Cir. 1996). However, the Supreme Court has  
 10 noted:  
 11

13 [W]e must distinguish between evidence of disputed facts and disputed matters of  
 14 professional judgment. In respect to the latter, our inferences must accord deference  
 15 to the views of prison authorities. Unless a prisoner can point to sufficient evidence  
 16 regarding such issues of judgment to allow him to prevail on the merits, he cannot  
 prevail at the summary judgment stage.

17 *Beard v. Banks*, 548 U.S. 521, 530 (2006) (internal citations omitted). Where reasonable minds  
 18 could differ on the material facts at issue, however, summary judgment should not be granted.  
 19 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251 (1986).

20 The moving party bears the burden of informing the court of the basis for its motion, and  
 21 submitting authenticated evidence to demonstrate the absence of any genuine issue of material fact  
 22 for trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986); *see Orr v. Bank of America*, 285 F.3d  
 23 764, 773-74 (9th Cir. 2002). Once the moving party has met its burden, the party opposing the  
 24 motion may not rest upon mere allegations or denials in the pleadings, but must set forth specific  
 25 facts showing the existence of a genuine issue for trial. *Anderson*, 477 U.S. at 248. Rule 56(c)  
 26 mandates the entry of summary judgment, after adequate time for discovery, against a party who  
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1 fails to make a showing sufficient to establish the existence of an element essential to that party's  
2 case, and upon which that party will bear the burden of proof at trial. *Celotex*, 477 U.S. at 322-23.

3 On summary judgment the court is not to weigh the evidence or determine the truth of the  
4 matters asserted, but must only determine whether there is a genuine issue of material fact that must  
5 be resolved by trial. *See Summers v. A. Teichert & Son, Inc.*, 127 F.3d 1150, 1152 (9th Cir. 1997).  
6 Nonetheless, in order for any factual dispute to be genuine, there must be enough doubt for a  
7 reasonable trier of fact to find for the plaintiff in order to defeat a defendant's summary judgment  
8 motion. *See Addisu v. Fred Meyer, Inc.*, 198 F.3d 1130, 1134 (9th Cir. 2000).  
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## 11 **B. Analysis**

12 Defendant Good contends that he did not act with deliberate indifference to plaintiff's serious  
13 medical needs (#30, p. 6). Specifically, defendant Good asserts that after he contacted plaintiff, no  
14 more than thirty minutes elapsed before he requested emergency medical aid (#35, p. 4). Defendant  
15 Good also asserts that there is no evidence that any alleged delay in plaintiff's medical treatment  
16 caused plaintiff to sustain further injury. *Id.*  
17

### 18 **1. Fourteenth Amendment Deliberate Indifference to a Serious Medical Need**

19 A pre-trial detainee's claim of inadequate medical care arises under the Fourteenth  
20 Amendment Due Process Clause, rather than the Eighth Amendment. *Carnell v. Grimm*, 74 F.3d  
21 977, 979 (9th Cir. 1996); *see Pierce v. County of Orange*, 526 F.3d 1190, 1205 (9th Cir. 2008).  
22 However, the Fourteenth Amendment affords rights at least as great as the Eighth Amendment, and  
23 courts apply the same standard to a pre-trial detainee's claim of deliberate indifference under the  
24 Fourteenth Amendment as to a prisoner's claim under the Eighth Amendment. *City of Revere v.*  
25 *Massachusetts General Hosp.*, 463 U.S. 239, 244 (1983); *Pierce*, 526 F.3d at 1205.  
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1       The Eighth Amendment prohibits the imposition of cruel and unusual punishment and  
2 “embodies broad and idealistic concepts of dignity, civilized standards, humanity, and decency.”  
3 *Estelle v. Gamble*, 429 U.S. 97, 102 (1976). To prevail in an action alleging cruel and unusual  
4 punishment, a plaintiff’s case must satisfy an objective standard—that the deprivation was serious  
5 enough to amount to cruel and unusual punishment; and a subjective standard—deliberate  
6 indifference. *Farmer v. Brennan*, 511 U.S. 825, 834 (1994); *see also Wilson v. Seiter*, 501 U.S. 294,  
7 297-304 (1991). A prison official violates the Eighth Amendment when he responds with deliberate  
8 indifference to an inmate’s serious medical needs. *Farmer*, 511 U.S. at 834.

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11       The objective requirement of a “serious medical need” is met if the failure to treat a  
12 prisoner’s condition could result in further significant injury or the “unnecessary and wanton  
13 infliction of pain.” *Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006) (citing *Estelle*, 429 U.S. at  
14 104). In this circuit, examples of serious medical needs include “the existence of an injury that a  
15 reasonable doctor or patient would find important and worthy of comment or treatment; the presence  
16 of a medical condition that significantly affects an individual’s daily activities; or the existence of  
17 chronic and substantial pain.” *Lopez v. Smith*, 203 F.3d 1122, 1131 (9th Cir. 2000) (citations  
18 omitted).

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20       The subjective standard of deliberate indifference requires “more than ordinary lack of due  
21 care for the prisoner’s interests or safety.” *Farmer*, 511 U.S. at 835 (quoting *Whitley*, 475 U.S. at  
22 319). The requisite state of mind lies “somewhere between the poles of negligence at one end and  
23 purpose or knowledge at the other.” *Id.* at 836. To prove deliberate indifference, a plaintiff must  
24 demonstrate that prison staff denied, delayed, or intentionally interfered with medical treatment, or  
25 that the manner in which prison staff provided medical care indicated deliberate indifference; and  
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1 that plaintiff sustained damages as a result of such conduct. *Hutchinson v. United States*, 838 F.2d  
2 390, 394 (9th Cir. 1988).

3 Plaintiff alleges that defendant Good exhibited deliberate indifference to plaintiff's serious  
4 medical needs by refusing to allow plaintiff to be transported to the hospital for "several hours,"  
5 despite plaintiff's complaints of excruciating pain and profuse bleeding from plaintiff's head wound  
6 (#6-1, pp. 5-6). Even assuming *arguendo* that the alleged pain and blurred vision associated with  
7 plaintiff's head wound constituted a serious medical need, the court finds that defendant Good did  
8 not exhibit deliberate indifference to plaintiff's medical condition.  
9

10  
11 First, contrary to plaintiff's assertions, defendant Good did not force plaintiff to wait "several  
12 hours" before receiving medical assistance. The record indicates that defendant Good arrived at the  
13 scene of the attempted grand theft auto at 4:11 a.m. (#30-1, Ex. 1, ¶ 2; #30-1, Ex. 2, p. 2). By the  
14 time defendant Good arrived, three other officers had already reported to the scene, had handcuffed  
15 plaintiff, and had taken plaintiff into custody (#30-1, Ex. 1, ¶ 4). Defendant Good spoke with the  
16 victims and recorded their statements. *Id.* At approximately 4:29 a.m., Officer Cragg placed  
17 plaintiff in the rear of defendant Good's patrol vehicle. *Id.* at ¶ 6. However, defendant Good was  
18 not in the vehicle at that time. *Id.* When defendant Good finished his investigation, he contacted  
19 plaintiff and advised him of his *Miranda* warnings.<sup>6</sup> *Id.* Plaintiff stated that he wished to speak with  
20 defendant Good, and then they discussed plaintiff's involvement with the reported attempted grand  
21 theft auto (#30-1, Ex. 1, ¶ 6; #30-1, Ex. 3, p. 4).  
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23  
24 During this conversation, defendant Good noticed that plaintiff had dried blood on the left  
25 side of his face and a large bump on the back of his neck (#30-1, Ex. 1, ¶ 6). Defendant Good also  
26 observed that plaintiff was not "actively bleeding" and did not appear to be in acute distress. *Id.*  
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28 <sup>6</sup> The record reflects that defendant Good contacted plaintiff at some time between 4:29 a.m. and 5:02 a.m. (#30-1, Ex. 1, ¶¶ 6-7).

1 However, plaintiff told defendant Good that his head hurt. *Id.* Accordingly, at 5:02 a.m., defendant  
2 Good called dispatch and asked them to send a REMSA ambulance unit to the scene for a  
3 “conscious breathing subject with a head injury who [is] complaining of pain.” *Id.* at ¶ 7. The  
4 ambulance arrived six minutes later. *Id.* Considering plaintiff’s relatively minor injuries, and  
5 considering the short time between defendant Good’s first contact with plaintiff (sometime after 4:29  
6 a.m.) and his decision to call medical responders to assess plaintiff’s injuries (5:02 a.m.), the court  
7 finds that defendant Good did not ignore an excessive risk to plaintiff’s health or safety.  
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9       Secondly, defendant Good did not disregard plaintiff’s medical condition. Instead, defendant  
10 Good personally ensured that plaintiff received the medical treatment recommended by the REMSA  
11 technicians, even after plaintiff refused to allow the REMSA technicians to transport him to the  
12 hospital. When the REMSA technicians evaluated plaintiff’s condition, they found that he was alert  
13 and spoke clearly and concisely, although he was not “actively cooperative” and refused to assist the  
14 medical technicians with his assessment (#30-1, Ex. 4). The medical technicians noted that although  
15 plaintiff had a small laceration on the left side of his head, plaintiff’s chief complaint was of right  
16 arm pain. *Id.* Plaintiff also denied being lightheaded or dizzy and stated that he did not have blurred  
17 vision. *Id.* The REMSA technicians informed defendant Good that even though plaintiff did not  
18 want to go to the hospital with them, plaintiff should be taken to the hospital for a CAT scan (#30-1,  
19 Ex. 1, ¶ 7; #30-1, Ex. 3, p. 4; #30-1, Ex. 4). Consequently, at 5:20 a.m., defendant Good took the  
20 initiative to drive plaintiff to Renown Regional Medical Center himself (#30-1, Ex. 1, ¶ 8). Because  
21 of defendant Good’s actions, plaintiff was able to receive a CAT scan shortly after his injury. There  
22 is simply no basis for concluding that defendant Good denied, delayed, or intentionally interfered  
23 with plaintiff’s medical treatment. See *Hutchinson*, 838 F.2d at 394.  
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1 Finally, although plaintiff alleges that his vision has deteriorated due to delayed and  
2 insufficient treatment, “[u]ncorroborated and self-serving testimony” without more, will not create a  
3 genuine issue of material fact precluding summary judgment. *See Villiarimo v. Aloha Island Air,*  
4 *Inc.*, 281 F.3d 1054, 1061 (9th Cir. 2002). Plaintiff has advanced no evidence, other than his own  
5 beliefs, to substantiate his allegation that his vision deteriorated because he received medical  
6 treatment a few minutes later than he might have received medical treatment if defendant Good had  
7 immediately rushed plaintiff to the hospital. Plaintiff has also submitted no evidence to support his  
8 claim that an unidentified prison doctor found that the blow from the metal pipe caused plaintiff to  
9 suffer an eye injury, which has steadily worsened over time (#6-1, p. 7). Plaintiff cannot avoid  
10 summary judgment by relying solely on conclusory allegations that are unsupported by factual data.  
11 *See Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989).

14 In addition, plaintiff was examined by REMSA medical technicians and by Dr. Gary Gansert  
15 within a short time after plaintiff was hit with the metal pipe. These medical providers found that  
16 plaintiff had a headache and a superficial laceration on his forehead, but that plaintiff was also alert,  
17 had not lost consciousness, could speak clearly and concisely, was not lightheaded or dizzy, and had  
18 no neck pain, blurred vision or double vision (#30-1, Ex. 4; #30-1, Ex. 5). Further, the results of  
19 plaintiff’s CAT scan came back normal. *Id.* Dr. Gansert merely prescribed plaintiff some Vicodin,  
20 as needed, for pain. *Id.* Accordingly, even if defendant Good marginally delayed plaintiff’s medical  
21 treatment by not immediately contacting REMSA after he observed plaintiff’s injuries, the court  
22 finds that plaintiff has not established that he suffered any harm from this minor delay.

25 Plaintiff’s claim that defendant Good exercised deliberate indifference to plaintiff’s serious  
26 medical need is contrary to the evidence before the court. Plaintiff has failed to demonstrate the  
27 existence of any genuine issue of material fact; and has failed to produce any evidence to suggest  
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1 that defendant Good acted in conscious disregard of a significant risk to plaintiff's health.  
2 Accordingly, the court recommends that defendant's motion for summary judgment (#30) be  
3 granted.<sup>7</sup>

### 4 III. CONCLUSION

5 Based on the foregoing and for good cause appearing, the court concludes that defendant  
6 Good did not exhibit deliberate indifference to plaintiff's serious medical needs. Defendant Good is  
7 entitled to summary judgment in his favor, as there are no genuine issues of material fact for trial.  
8 Accordingly, the court recommends that defendant's motion for summary judgment (#30) be  
9 **GRANTED**. The parties are advised:

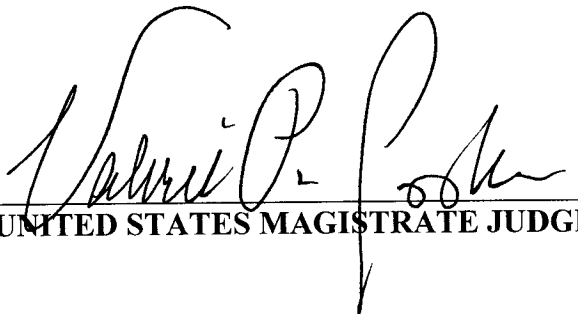
10 1. Pursuant to 28 U.S.C. § 636(b)(1)(c) and Rule IB 3-2 of the Local Rules of Practice,  
11 the parties may file specific written objections to this Report and Recommendation within fourteen  
12 days of receipt. These objections should be entitled "Objections to Magistrate Judge's Report and  
13 Recommendation" and should be accompanied by points and authorities for consideration by the  
14 District Court.

15 2. This Report and Recommendation is not an appealable order and any notice of appeal  
16 pursuant to Fed. R. App. P. 4(a)(1) should not be filed until entry of the District Court's judgment.

### 17 IV. RECOMMENDATION

18 **IT IS THEREFORE RECOMMENDED** that defendant's motion for summary judgment  
19 (#30) be **GRANTED**.

20 **DATED:** April 4, 2013.

21   
22 **UNITED STATES MAGISTRATE JUDGE**

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<sup>7</sup> Because the court recommends granting summary judgment, the court need not reach the issue of qualified immunity.